

MINUTES

**MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION
COMMITTEE ON BUSINESS AND INDUSTRY**

Call to Order: By **CHAIRMAN JOHN HERTEL**, on February 19, 1999 at 8:00 A.M., in Room 410 Capitol.

ROLL CALL

Members Present:

Sen. John Hertel, Chairman (R)
Sen. Mike Sprague, Vice Chairman (R)
Sen. Dale Berry (R)
Sen. Vicki Cocchiarella (D)
Sen. Bea McCarthy (D)
Sen. Glenn Roush (D)
Sen. Fred Thomas (R)

Members Excused: None.

Members Absent: None.

Staff Present: Bart Campbell, Legislative Branch
Mary Gay Wells, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 482 SB 483 SB 484 SB 485,
2/15/1999; SB 501, 2/16/1999
Executive Action: SB 501; SB 482; SB 483
SB 484; SB 485; SB 452
SB 453; SB 446; SB 490
SB 406; SB 130; SB 132
SB 408; SB 360; SB 391

{Tape : 1; Side : A; Approx. Time Counter : 0}

HEARING ON SB 482; SB 483; SB 484; SB 485

Sponsor: SENATOR KENNETH "KEN" MESAROS, SD 25, CASCADE

Proponents: Peter Blouke, Director, Department of Commerce
Mark Staples, MT Assoc. of Mortgage Brokers
Jeannie Flechsenhar, Board of Real Estate Appraisers
Steve Snezek, MT Assoc. of Realtors
Bill Eusterman, MT Assoc. of Mortgage Brokers
Steve Stiles, President, MT Assoc. of Mortgage
Brokers
John Cadby, MT Bankers Assoc.
Linda Cockhill, Mountain West Bank
Tom Nuebel, MT Credit Unions' League

Opponents: None

Informational Testimony: Don Hutchinson, Commissioner, Division
of Banking & Financial Institutions

Opening Statement by Sponsor:

SENATOR KENNETH "KEN" MESAROS, SD 25, CASCADE. I have **SB 482** for your consideration and would suggest that **SB 483, SB 484 and SB 485** be included as they pertain to **CI-75**. This bill will establish licensure for mortgage lenders creating some oversight and regulatory authority for this activity. The activities of lenders and brokers offering financing for residential real property other than banks are growing in this state and across the country. Every state, but Texas, licenses and regulates activities of residential mortgage lenders and mortgage brokers. The time has come for Montana to join the 48 other states in licensing and regulating, etc. the lenders and brokers.

The purpose of this bill is to protect the consumers seeking residential mortgage loans and insure that the residential mortgage lending and brokering operate fairly, honestly, efficiently and free from the deceptive practices. There will be two classifications of licensure--mortgage brokers and mortgage lenders. Without acquiring such license, no one will be exempted except those in Section 4. There will be pre-licensing investigations. There will be payment of application fees, payment of biennial renewal fees and audits. The bill calls for stiff fines for violations of standards set forth by the Banking Commissioner. All expenses contained in the bill will be borne by the mortgage brokers and lenders. There will be no impact on the General Fund.

Proponents' Testimony:

Peter Blouke, Director, Department of Commerce. We rise in support of this fine bill. The Administration has been working

very hard to develop an economic environment that will improve the jobs and income for Montanans. One of the things that we see as important is to have a clear and well-regulated business environment. This will be a major step forward in that process. This will not only protect the consumers but will protect and insure those individuals who are participating in the brokerage and lending business have a level and fair playing field.

Mark Staples, MT Assoc. of Mortgage Brokers. There was a broker in Whitefish who was collecting a \$650 application fee and telling his clients that it was for a credit report and appraisal. The appraisals were never done and the loans were turned down with no reason given and no refunds given. One customer went to the Whitefish Police Department; the policeman called the broker; the broker said he would send them a check; the check bounced; and he left the state. And there is no recourse. And there is no one to complain to. This and other stories show the reasons why this bill is so necessary. This bill has standards, has significant application fees, has significant bi-annual audits to make sure that these people stay solvent and professional, and has a significant bond requirement.

There are exemptions, of course. We do not seek to bring everyone into "our universe." In Section 4 under definitions, exempt persons are: registered banks and bank corporations, federally chartered savings and loans, credit unions, savings and loans associations either federally or state chartered, an entity solely engaged in commercial mortgage lending, service corporation of a savings and loans entity, etc. There was an oversight either in the drafting or the agreement between the mortgage brokers and the Banking Commissioner that could be read to bring banking institutions into the realm of this bill. That is not the intention and there will be an amendment offered. We are in support of that amendment.

{Tape : 1; Side : A; Approx. Time Counter : 7.7}

Jeannie Flechsenhar, Board of Real Estate Appraisers. She gave her testimony and handed in a written copy **EXHIBIT (bus41a01)**.

Steve Sneseck, MT Assoc. of Realtors. We support this excellent consumer protection bill. Our members are involved not only in helping to sell and purchase real estate for consumers in Montana but part of that responsibility is involved in helping them obtain financing. When something goes wrong in the transaction either through fraud or oversight, it reflects poorly on my membership. Thank you for your consideration.

Bill Eusterman, MT Assoc. of Mortgage Brokers. In regard to licensing, my concern is to the servicing of the loan. This bill will help our association and brokers to become more recognized and certified. There will be standards set for us and will provide recourse against brokers who are not above board. We did have input into this bill and are in full support of the bill.

Steve Stiles, MT Assoc. of Mortgage Brokers. One of the paramount issues was protection for the customer. They need someone to complain to. We hear many complaints from consumers throughout the state. Right now with no regulations, there are brokers who are here today and gone tomorrow. This bill will provide professional standards for our industry and will consumers some options. The industry has become very complex. The average brokerage in Montana has three to five employees. But there are many people who are in this industry without offices or phones and they are not around when problems arise. We have seen a great deal of overcharging for appraisals.

{Tape : 1; Side : A; Approx. Time Counter : 14.2}

John Cadby, MT Bankers Assoc. This is a good bill and one that is needed in the mortgage lending business. This industry is not under the same laws and regulations that a bank or credit union or savings and loan association are under. When the bill was drafted it was intended to exempt financial institution and in the drafting that was done. But an error occurred and so I offer an amendment to take care of this error **EXHIBIT (bus41a02)**.

Linda Cockhill, Mountain West Bank. I would like to reiterate that the banks are already regulated by federal and state laws. We are required to disclose to the customer when the application is taken both on closing costs and truth in lending. As far as a disclosure statement goes, it does show what we must comply with in reference to selling our loans. I have some information here that will be helpful to the committee **EXHIBIT (bus41a03)**, **EXHIBIT (bus41a04)** and **EXHIBIT (bus41a05)**.

Tom Nuebel, MT Credit Unions' League. We would like to go on record in supporting the amendment proposed by the MT Bankers Assoc. We feel that exempting financial institutions from this law is appropriate and would hope you would give it your consideration. Thank you.

Opponents' Testimony: None

Informational Testimony:

Don Hutchinson, Commissioner, Division of Banks and Financial Institutions, Department of Commerce. We are in support of the bill and the proposed amendment. Mortgage broker is an independent business that specializes in the origination of mortgage loans. These loans are then sold to mortgage wholesalers or investors. Mortgage brokers differ from mortgage bankers by the degree of loan servicing they do. Companies servicing or funding more than 50% of their production are deemed mortgage bankers. **Senate Bill 482** would license and regulate both mortgage brokers and bankers. Depository institutions, banks, thrifts, savings banks, credit unions and consumer loan companies are excluded from this act. Forty-four states currently have statutes regulating first lien mortgage, banking and brokering and all fifty states have regulations addressing second lien mortgage business. The extent to the cost of this regulation varies considerably among states primarily depending upon how large the firms are and how much business they are doing in that state. The regulation of the mortgage banking industry is generally under the jurisdiction of the state banking department. There are five exceptions and they are being regulated under the consumer loan regulatory function. Mortgage licensees have been set at five to ten employees and \$75,000 to \$150,000 net worth. They are relatively young firms, 5 to 10 years in business, and the principle of the firm is usually has 10 years experience in mortgage financing. Most brokers are ex-financial service sector employees usually with experience as mortgage originators. The mortgage broker industry generally allocates its business to wholesalers based on service first and price second basis.

Our Department in 1993 started getting an ever increasing number of calls from the public regarding concerns about mortgage brokers. When they could identify who their broker was and what state they were from, and we could determine that there was a regulation in that state, we got some help for these people by referring the complaint back to the regulator of the state of origin of the broker. We felt that regulation was necessary and did start working with the mortgage association early in 1998. You have the results of that work before you in **SB 482**. Thank you for your time.

{Tape : 1; Side : A; Approx. Time Counter : 20.9}

Questions from Committee Members and Responses:

SEN. GLENN ROUSH asked **Commissioner Hutchinson** if he was seeing problems with Montana brokers and their consumers? **Commissioner Hutchinson** said that is hard to address. The bulk of complaints that are being received are not from Montana brokers or lenders.

There have been instances. The bulk of them come from consumers after the mortgage has been put together and sold in the secondary market. Then it is often sold to someone else down the road. The rules change and these are the primary complaints.

SEN. ROUSH then asked about the contract for service. When a person comes in, is it necessary for the broker to get that person to sign the application before they disclose everything to them? **Commissioner Hutchinson** said that this bill addresses that particular question. They have seen instances of people already having signed the forms and the blanks have not all been filled in. This bill provides for disclosure. The customer will be given ample time to read the contract.

SEN. JOHN HERTEL asked **Ms. Cockhill** to further elaborate on the disclosure procedure. **Ms. Cockhill** said that in the little handbook, under the disclosure regulations on page 12, there are four things that need to be given to a customer when he places a loan application with the bank. There is the loan application itself. There is the good-faith estimate. There is the federal truth in lending. And the disclosure statement must be given to the customer and the lender must go over it with the customer. This is to be done within three days of the date of the application. This is given at the beginning before the application is accepted.

SEN. MIKE SPRAGUE asked **Peter Blouke** about the consumer protection aspect of the bill and wondered if the state had a consumer protection affairs department in the Department of Commerce. **Mr. Blouke** said that they have an excellent Consumer Affairs Division within the Department. The Department would receive the complaint from the customer and would attempt to deal with the complaint if it were with a Montana business. The problem usually is due to the mortgage brokers and lenders who are not licensed and so there is no legal recourse. This bill would provide the legal framework under which they could take more aggressive legal action.

{Tape : 1; Side : A; Approx. Time Counter : 31}

SEN. DALE BERRY asked **Mr. Blouke** what qualifications are required of mortgage brokers and lenders. **Mr. Blouke** turned the question over to **Commissioner Hutchinson**. **Commissioner Hutchinson** said that this particular issue was looked at very carefully. There are 7 or 8 states that have provisions for testing, etc. These states said that this is very hard to do. The Department decided not to do this in Montana. In regard to the Internet, it is a difficult issue. If a complaint were registered and the person could identify the state that the entity was from, this bill would give Montana the opportunity to check and see if they were

licensed and if there were some legal aspects that could be enacted. The whole industry is looking at this issue right now, but no answers have been formulated.

SEN. VICKI COCCHIARELLA asked **Commissioner Hutchinson** about a problem that she was experiencing about her mortgage company that had just happened to lose the mortgage payment. Does this bill help her problem? **Commissioner Hutchinson** said that "yes" it does. If the state can be identified as issuing a license to a mortgage company, Montana can go to that state to see what rules and regulations are in statute. If that company is violating the rules and regulations of the state that they are licensed in, they can be held accountable under those laws.

SEN. COCCHIARELLA asked **Mark Staples** how this bill could help her problem. **Mark Staples** said that the bonding requirement would be the major difference. If the mortgage company which is doing business in Montana has a \$50,000 bond and they sold your mortgage to Starbank, the Department has the right to file a complaint in the district court in Montana and whether Starbank chooses to show up or not, and they have been doing business here, a judgment can be directed at them and even if they are not around, then the bond is in place and could be used against them.

SEN. SPRAGUE asked **Annie Bartos, Department of Commerce**, about the use of reciprocity with other states. **Ms. Bartos** said that in terms of reciprocity, what is normally seen in the area of enforcement, is reciprocity relating to licensure. If one state allows the licensure of a profession or entity, and the same exam or requirement exist, then there isn't the need to go through the same exam, etc. They would just recognize each other's license. But in the case of enforcement of the law, this bill would allow Montana to bring a case against a mortgage lending business under the laws of the state in which they are licensed.

{Tape : 1; Side : B; Approx. Time Counter : 0}

Closing by Sponsor:

SENATOR MESAROS closed. The language in the bill is in 48 other states and it's time Montana participated and provided that same level of consumer protection. We have part of an industry who is going to step up to the plate to elevate their level of professionalism and provide the funding for the services they provide. This is a good consumer protection bill and it's long overdue. I hope you would add the technical amendments and bring the bill forward. The other bills are associated with **SB 482** and are ballot language which would be used in case of CI-75.

CHAIRMAN JOHN HERTEL relinquished the chair to **VICE CHAIRMAN MIKE SPRAGUE** so he could present SB 501.

HEARING ON SB 501

Sponsor: **SENATOR JOHN HERTEL, SD 47, MOORE.**

Proponents: **Annie Bartos, Chief Legal Counsel, Department of Commerce**
Guy Huestis, Hillcrest Lawn Memorial
Steve Yeakel, MT Funeral Directors Assoc.

Opponents: **None**

Opening Statement by Sponsor:

SENATOR JOHN HERTEL, SD 47, MOORE. This is a committee-sponsored bill which came about because of a bill last legislative session which dealt with repealing what the Department of Commerce was out dated law -- the "Mausoleum-Columbarium Act" -- because no mausoleum existed in Montana. It was recently learned that Hillcrest Lawn Memorial Association, a non-profit organization, in Great Falls operates a mausoleum; therefore, **SB 501.**

Proponents' Testimony:

Annie Bartos, Department of Commerce (DOC). **SEN. HERTEL** did a good job of explaining the bill; however, there are some amendments which are at the recommendation of the Board of Funeral Service Directors **EXHIBIT (bus41a06)**. They remove "crematoriums" which were mistakenly included in the draft bill. The DOC strongly urges its passage.

Guy Huestis, Hillcrest Lawn Memorial Association. We would appreciate your consideration.

Steve Yeakel, Montana Funeral Directors Association. The consensus of the Association has no problem with this bill but considers it necessary for public safety and protection.

Opponents' Testimony: **None.**

{Tape : 1; Side : B; Approx. Time Counter : 6}

Questions from Committee Members and Responses:

SEN. BEA MCCARTHY said the 1993 Session dealt with who could control the rights to cremate a body and came up with consent forms had to be signed in order to do a cremation. She didn't find that language in the bill -- she wondered if the amendments changed that. **Annie Bartos** said **SB 501** didn't address anything to do with cremation; rather, it dealt with the disposal of the body in a mausoleum-columbarium. In other words, this bill had no effect on present language on who had the authority to allow the cremation.

SEN. MCCARTHY commented it changed who was permitted to bury the body. **Melody Brown, Board of Funeral Service Directors**, said it didn't change that.

SEN. MIKE SPRAGUE asked for the meaning of both "non-profit" in the heading of the bill and "columbarium". **Melody Brown** said "for-profit" was governed by the Board of Funeral Services and there was no reference in the Board to the non-profit situation at Hillcrest Lawn Memorial. The meaning of "columbarium" is noted on Page 1, Lines 15-16, of **SB 501**.

SEN. SPRAGUE asked **Guy Huestis** the meaning of "columbarium" and was told it was an archaic term for a place where urns were stored in niches, i.e. a bookshelf type of arrangement.

Closing by Sponsor:

SENATOR HERTEL closed. The bill is needed and I would appreciate your help on the Senate Floor.

{Tape : 1; Side : B; Approx. Time Counter : 10.4}

EXECUTIVE ACTION ON SB 501

Motion: **SEN. MCCARTHY** moved that **SB 501 DO PASS**.

Discussion: **Motion/Vote:** **SEN. MCCARTHY** moved that **SB 501 BE AMENDED**. Motion carried unanimously. 7-0

Motion/Vote: **SEN. MCCARTHY** moved that **SB 501 DO PASS AS AMENDED**. Motion carried unanimously. 7-0

EXECUTIVE ACTION ON SB 482

Motion: **SEN. COCCHIARELLA** moved that **SB 482 DO PASS**.

Discussion: Motion/Vote: SEN. COCCHIARELLA moved that SB 482 BE AMENDED **EXHIBIT**(bus41a07). Motion carried unanimously. 7-0

Motion/Vote: SEN. MCCARTHY moved that SB 482 DO PASS AS AMENDED. Motion carried unanimously. 7-0

EXECUTIVE ACTION ON SB 483; SB 484; SB 485

Motion/Vote: SEN. MCCARTHY moved that SB 483; SB 484; SB 485 DO PASS. Motion carried unanimously. 7-0

EXECUTIVE ACTION ON SB 452

Motion: SEN. BERRY moved that SB 452 DO PASS.

Discussion: Motion: SEN. BERRY moved that SB 452 BE AMENDED.

Discussion: Bart Campbell explained the amendments **EXHIBIT**(bus41a08). He said that it just provides an immediate effective date.

Vote: Motion that SB 452 BE AMENDED carried unanimously. 7-0

Motion/Vote: SEN. BERRY moved that SB 452 DO PASS AS AMENDED. Motion carried unanimously. 7-0

EXECUTIVE ACTION ON SB 453

Motion: SEN. MCCARTHY moved that SB 453 DO PASS.

Discussion: Motion: SEN. MCCARTHY moved that SB 453 BE AMENDED.

Discussion: SEN. MCCARTHY explained the amendments **EXHIBIT**(bus41a09) that it makes it retroactive to January 1, 1999 for the new resort applications.

Vote: Motion that SB 453 BE AMENDED carried unanimously. 7-0

Motion/Vote: SEN. MCCARTHY moved that SB 453 DO PASS AS AMENDED. Motion carried unanimously. 7-0

EXECUTIVE ACTION ON SB 446

Motion: SEN. BERRY moved that SB 446 DO PASS.

Discussion: **Motion:** SEN. MCCARTHY moved that SB 446 BE AMENDED.

Discussion: Mr. Campbell explained the amendments **EXHIBIT (bus41a10)**. The amendments were from the Department. Mr. Staples was in agreement. One was to provide an immediate effective date and also an applicability date stating that this act is only going to apply to applications received after the effective date of this bill. Number two is inserting a subsection (c) that is mostly clarification about when quotas are filled, there would be one more license made available. This would be a one time deal. Number three concerns people who had put into the lottery system, had qualified, but did not receive a license. They would be given preference the next time. The last one states that interest would not accrue during the period when there is a protest on an application. **SEN. FRED THOMAS** asked about number three--what sort of a preference would be given? **SEN. MCCARTHY** said that last time the applications went into a pool and if the person was already in the pool, they would get preference first since they had already gone through the examinations, etc. **SEN. COCCHIARELLA** stated that in the lottery some, because of criteria, have preference over others who don't meet all the criteria. So it is not a preference concerning money, but just a list of criteria one meets. If you have a preference, you are higher up in the draw. This just gives those people who missed out last time the preference to be considered higher up in the draw.

Vote: Motion that SB 446 BE AMENDED carried unanimously. 7-0

Motion/Vote: SEN. ROUSH moved that SB 446 DO PASS AS AMENDED.
Motion carried unanimously. 7-0

{Tape : 1; Side : B; Approx. Time Counter : 19.7}

EXECUTIVE ACTION ON SB 490

Motion: SEN. THOMAS moved that SB 490 DO PASS.

Discussion: **Motion:** SEN. COCCHIARELLA moved that SB 490 BE AMENDED.

Discussion: Mr. Campbell said the amendments **EXHIBIT (bus41a11)** came from Carl Schweitzer who represents the subcontractors. All

parties seemed to be in agreement. State agencies were already under statutory obligations of having to pay within 30 days and they pay a fine if they are late. Number one takes out state entities but leaves in local governments, school districts, etc. Number two changes the time for the pay from 15 days to 30 days so it is consistent with the state agencies. Number three, after the word owner (commercial and local government entities), it says "or a state agency" which means that when a contractor receives payment from the above entities they must within three days turn around and pay the subcontractor. Number four and five makes the 30 days from 15 and 33 days from 18.

SEN. HERTEL said that he had visited with some of the subcontractors and they were very happy with the bill. **SEN. THOMAS** asked if the state agencies were being taken out of the bill. **Mr. Campbell** said "no," they and others are included in the bill.

SENATORS BERRY AND SPRAGUE both had received statements from the contractors and subcontractors who were in favor of this bill with the amendments.

Vote: Motion that SB 490 BE AMENDED carried unanimously. 7-0

Motion/Vote: **SEN. COCCHIARELLA** moved that SB 490 DO PASS AS AMENDED. Motion carried 6-1 with Senator Thomas voting no.

EXECUTIVE ACTION ON SB 408

Motion/Vote: **SEN. SPRAGUE** moved that SB 408 BE TABLED. Motion carried 6-1 with Senator Cocchiarella voting no.

{Tape : 1; Side : B; Approx. Time Counter : 27.7}

EXECUTIVE ACTION ON SB 406

Motion: **SEN. MCCARTHY** moved that SB 406 DO PASS.

Discussion: **SEN. FRED THOMAS** reported on the subcommittee that met on February 18 to discuss SB 406 and HB 211. They agreed on a couple of principles that they wanted to operate under. These two bills deal with the default supplier. Default supplier is someone who would take care of individuals in Montana Power territory that does not choose a provider by July 1, 2002 or earlier. One principle was that the Public Service Commission

will continue to make the decisions as to who will be the default supplier or suppliers. The second principle was to leave the door open so that there can be more than one default supplier. There are amendments that were put together **EXHIBIT (bus41a12)**. **Debbie Smith, Natural Resources Defense Council, and Ed Bartlett, Montana Power Company,** worked together to come to a consensus on the amendments for this bill of **SEN. STEVE DOHERTY**.

Mr. Bartlett presented the main points of the amendments. There were six or so people present after the subcommittee meeting who put these consensus amendments together. They focused on concerns over the Bonneville Power Administration and recognizing that at the state level, we couldn't affect that. All parties were concerned on how to handle this. They were making sure that, consistent with **REP. ROYAL JOHNSON'S** bill, there was recognition that the Public Service Commission would make the determination of whom would be the default provider or providers. The group recognized that the normal rate making treatment of the PSC should not apply to this default provider or providers. There were changes throughout concerning rate making authority to either "equitable or fair".

SEN. MCCARTHY said the amendments were lengthy because of adding an "s" to provider and they also took out "just and reasonable" in a number of places. Basically, much was clean-up language.

SEN. DALE BERRY asked if there would be amendments to **HB 211**?

SEN. THOMAS said that there would be some amendments in that regard that falls along the same line of how many suppliers. The intent is not to have **SB 406** conflict with **HB 211**.

Mr. Campbell asked **Ms. Smith** to look at No. 16 of the amendments. An insert has been put in at this point. On No. 17 there is a sentence deleted following the same (1)(a). The question now is what is to be done with the two sentences in No. 16 following (1)(a)? Do these two questions come before or after the deleted sentence?

Ms. Smith said that she would help in straightening out the amendments if there would be questions. It has been difficult without having a gray bill.

{Tape : 1; Side : B; Approx. Time Counter : 42.8}

Mr. Campbell suggested that all concerned should look at the bill with amendments carefully at the second reading to make sure that all has been put together properly.

SEN. THOMAS said that on these amendments there may be a correction or two as the committee moves through the bill. Many people could say there is no reason at this time for either of these bills. A default supplier is not needed right now. The reason that this bill should go forward is that there may be a potential setting up and garnering some less expensive BPA power on the market that would be used down the road. The other bill allows the cities and towns to work on what they have already begun. He did have a couple more amendments if this first set of amendments were passed.

SEN. ROUSH said that this bill should be sent to the Senate Floor as clean as possible. He hoped that no amendments would be moved on the Senate floor.

SEN. SPRAGUE asked **SEN. THOMAS** if he would support **HB 211** with some amendments. **SEN. THOMAS** said "yes," he would.

SEN. HERTEL said that it seemed impossible for these two bills to be melded together. There were actually two different issues.

Motion/Vote: **SEN. THOMAS** moved that **SB 406 BE AMENDED**. Motion carried unanimously. 7-0

{Tape : 2; Side : A; Approx. Time Counter : 0}

SEN. THOMAS moved that **SB 406 BE FURTHER AMENDED** by striking lines 14 through 18 on page 1 of the bill.

Discussion: **SEN. THOMAS** said that the **"WHEREAS, competitive retail marketsnot yet developed; and"** while it is true it is not a problem. That is not to have been done yet and should not be stated here. With the transition process, that is not in line. The next one **"WHEREAS, evidence from other states thatfor a significant period of time; and"** is not really true either. For those reasons he would like them removed from the bill. This bill is designed to try and bring as economical power to Montana as possible. These two statements are not specifically true and should not be stated.

SEN. MCCARTHY said that the subcommittee and the parties that were in attendance were in agreement.

Vote: Motion that **SB 406 BE AMENDED**, by striking line 14 through line 18 on page 1, carried unanimously. 7-0

Motion: SEN. THOMAS moved that the original amendments to SB 406 BE AMENDED by striking the word "cost-based" from Number 8.

SEN. THOMAS asked Gary Wiens of MT Electric Cooperatives Assoc. to speak to this amendment. The word "cost-based" reference in the original set of amendments (No. 8).

Mr. Wiens said that he thinks that the word "cost-based" is used only one time. They do have a concern with the use of this word. First, it is unnecessary because it states in the "Whereas" that the residents of Montana have access to the benefits of federal power and it should flow to the State of Montana." That would encompass any kind of power that power agencies could or may offer to all Montana customers. "Cost-based" is known in our business as "preference power". Preference power is something that is given to municipalities and cooperatives in the U.S. and was given to them in return for their agreeing to help pay for construction of these federal facilities. Congress has repeatedly reaffirmed preference power to these groups. To use "cost-based" is a contradiction of the policy of the federal government.

Vote: Motion that the original amendments of SB 406 BE AMENDED, by striking the word "cost-based" in No. 8, carried unanimously. 7-0

Motion: SEN. THOMAS moved that the original amendments of SB 406 BE AMENDED in No. 30, subsection (7).

Discussion: Mr. Alec Hanson, League of Cities and Towns, said this particular section includes the limitations on what default suppliers may not do. This might apply to other things that cities and towns are currently engaged in. If this is not clarified it may prevent a city or town from acting as a default supplier. If the committee would agree to a conceptual amendment in that these restrictions apply only to cities and towns when they are acting in the capacity as a default supplier and not in their normal business operations. Cities and towns do offer for sale other products such as water, sewer, garbage, etc. and technically if this language stays in without clarification, it could preempt them from participating as a default supplier.

SEN. HERTEL asked Mr. Hanson for wording that would be acceptable. Mr. Hanson said to add something like this: nothing in subsection (7)(a) prevents a local government utility from providing supply service to its local governmental customer accounts.

Vote: Motion that the original amendments of SB 406 BE AMENDED in No. 30, subsection (7) to add "nothing prevents a local government utility from providing supply service to its local governmental customer accounts", carried unanimously. 7-0

Mr. Campbell again said that all parties concerned should look carefully over the bill when it is amended to make sure that it fit the intent since he has so many bills and amendments to finish by late today.

Motion/Vote: SEN. MCCARTHY moved that SB 406 DO PASS AS AMENDED. Motion carried unanimously. 7-0

(A final copy of the edited amendments of this bill can be found in the "Standing Committee Report".)

{Tape : 2; Side : A; Approx. Time Counter : 10.1}

EXECUTIVE ACTION ON SB 360

Motion: SEN. COCCHIARELLA moved that SB 360 DO PASS.

Discussion: SEN. THOMAS mentioned some letters to the editor of the Great Falls Tribune concerning this bill, one in support and five against. (Some amendments had been handed in but none by the sponsor of the bill.) SEN. COCCHIARELLA said that she had received 25 letters in support of this bill. SEN. HERTEL said that some letters for the committee had been received from the International Brotherhood of Electrical Workers in Butte **EXHIBIT (bus41a13)** in opposition to the bill. (These were passed out.)

SEN. ROUSH said that he had worked in the natural gas supply business in northern Montana for Montana Power Co. and they dealt every day of the year with this situation. There was never a charge for emergency calls to the customer. They did quit doing that because of the liability problem. Yet MPC would have a trained service man come from Chester or Great Falls to take care of their customer. He said that there may be a concern in some areas but Montana Dakota Utility seemed to be the most criticized.

Substitute Motion/Vote: SEN. ROUSH made a substitute motion that SB 360 BE TABLED. Substitute motion carried 6-1 with Sen. Sprague voting no.

{Tape : 2; Side : A; Approx. Time Counter : 16.3}

EXECUTIVE ACTION ON SB 391

Motion: SEN. THOMAS moved that SB 391 DO PASS.

Discussion: **Motion:** SEN. THOMAS moved that SB 391 BE AMENDED.

Discussion: SEN. THOMAS explained the amendments **EXHIBIT (bus41a14)**. In essence, the bill is in the amendments. Amendment No. 4 strikes the old bill away. Look at Amendment No. 5, (e), the definition of rural area is listed in (i), (ii), and (iii). The intent is to keep taxes the way they are today. In Section 2 on page 2, "permissible purposes for incorporation", in (2) it updates the language of what they do today. It doesn't broaden what they can do. It says what they do now. In the same section (5) says that a co-op can do whatever they want for all lawful purposes that may be carried out by any business or commercial entity in this state. At the bottom of this section on the same page, the last three or four sentences means however they are subject to all state taxes otherwise applicable to like business or commercial enterprises.

SEN. COCCHIARELLA asked for clarification. SEN. THOMAS said that their ability to act deals with electricity such as billing, metering, distribution, communications, etc. But beyond electricity, they can now do whatever they want, but if they do then they will be taxed in the same manner of like businesses.

SEN. MCCARTHY asked about federal income tax for co-ops. SEN. THOMAS said that this bill does not address federal income tax. But if they are in a business other than electricity and the endeavor was normally taxed by the federal government, then they would be taxed in the same manner. But since this bill does not address that issue, he was not sure exactly what the federal government would do.

SEN. ROUSH asked if on page 2, parenthesis (4) the stricken line be left in, wouldn't that then include them under federal control. SEN. THOMAS said he couldn't answer completely, but he hoped to open the market up for the cooperatives.

Mr. Dave Wheelihan, General Manager, MT Electric Cooperatives Assoc. address these questions. Basically what has been done was to reword that economic development phrase because they do provide economic development to businesses, even in cities, who want to get started. In reference to the federal income tax, if a co-op gets into a business that is not related to electricity, they would be subject to an unrelated business income tax on the

federal level with the same corporate rate that a corporation pays.

SEN. THOMAS continued. The next issue in (5) concerns with natural gas and propane gas. If a coop was to get into natural gas distribution and put in the pipelines, they must deal with this on a territorial act with primarily Montana Power or any other utility. The bill does not want two lines going to a new subdivision area. These details must be worked out ahead of time before the lines are put in. If they can't work out the details, the language in this section then takes them to the Public Service Commission.

SEN. COCCHIARELLA asked if this addresses the concern about not being regulated. **SEN. THOMAS** said that in this legislation the cooperatives will not go under the regulation of the Public Service Commission.

{Tape : 2; Side : A; Approx. Time Counter : 29.8}

SEN. THOMAS moved to page 2, parenthesis (5) and said that on line 7 "or otherwise authorized by 35-18-106" should be deleted. He asked **Mr. Ed Bartlett of Montana Power** to address that.

Mr. Bartlett said the reason for the deletion is that it references Section 3 which lists the powers of the cooperatives and it makes sense to reference only the forgoing purposes in this section rather than bring in the much broader scope of the next section on powers because the purpose of this section is to say: for all of the purposes of the cooperative, they are taxed as a cooperative, for all other purposes, they are taxed the same as a like business.

Mr. Wheelihan said that co-operatives in towns or cities over 3500 would pay a property tax of 12 percent. That stays in place.
In rural areas it stay at 3 percent in the rural areas.

(The issue of taxes was further discussed. But it was settled that the above statements are correct.)

SEN. ROUSH asked if ten co-operatives banded together and distributed natural gas, would they be taxed like big utilities if they served only their own co-operative districts?

Mr. Bartlett said that "yes". Merger or not, a co-operative that conducted natural gas business would have to pay the taxes as if Montana Power were operating.

SEN. SPRAGUE moved to **TABLE SB 391** and then withdrew his motion.

SEN. COCCHIARELLA explained that she wanted the discussion to continue. She had support in the last session **SB 390**. Her concern was the role of the new purchaser of the generation will play in this mix. She sees that new groups come in and would have a lower tax rate. She hopes that it is not an erosion of what was trying to be accomplished in the last session.

{Tape : 2; Side : B; Approx. Time Counter : 0}

SEN. THOMAS said much work was done and explained why the bill had been presented in the manner that it had been. Things have changed even since the last session. He feels that this bill is needed. It only allows co-ops to update their statutes in general so they can move forward. He has tried to show that there are no tax consequences.

SEN. SPRAGUE said that the bill is muddled with too many amendments and it should wait and be refined over the next two years.

{Tape : 2; Side : B; Approx. Time Counter : 2.5}

Motion/Vote: **SEN. SPRAGUE** moved that **SB 391 BE TABLED**. Motion failed 3-4 with Senators Berry, Cocchiarella, Roush and Thomas voting no. (A roll call vote was taken, No. 1)

SEN. MCCARTHY said that she could not vote for the bill with amendment after amendment.

Vote: Motion that **SB 391 BE AMENDED** carried unanimously. 7-0 (A roll call vote was taken, No. 2)

Motion: **SEN. THOMAS** moved that **SB 391 DO PASS AS AMENDED**.

Discussion: **SEN. HERTEL** said that he felt there was too much uncertainty about the bill. He was not sure if the companies involved are in agreement. The co-operatives have not gotten together statewide. Some co-ops will benefit more than other. Consequently he cannot vote for it.

SEN. ROUSH said that he had some concerns about the bill but the taxation issue is not settled and cannot vote for the bill.

SEN. THOMAS asked if the bill could be approved and sent to the Taxation Committee.

Substitute Motion/Vote: SEN. SPRAGUE made a substitute motion that SB 391 BE TABLED. Substitute motion passed 4-3 with Senators Berry, Cocchiarella, and Thomas voting no. (A roll call vote was taken, No. 3)

{Tape : 2; Side : B; Approx. Time Counter : 10.8}

EXECUTIVE ACTION ON SB 130 AND SB 132

Motion/Vote: SEN. MCCARTHY moved SB 130 AND SB 132 TO BE REMOVED FROM THE TABLE.. Motion carried unanimously. 7-0

Motion/Vote: SEN. MCCARTHY moved that SB 130 AND SB 132 DO PASS. Motion carried unanimously. 7-0

{Tape : 2; Side : B; Approx. Time Counter : 16.7}

EXECUTIVE ACTION ON SB 307

Motion/Vote: SEN. THOMAS moved SB 307 TO BE REMOVED FROM THE TABLE. Motion failed with Senator Berry, Cocchiarella, Hertel, McCarthy, Roush, and Sprague voting no. 1-6

ADJOURNMENT

Adjournment: 11:00 A.M.

SEN. JOHN HERTEL, Chairman

MARY GAY WELLS, Secretary

JH/MGW

EXHIBIT (bus41aad)